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Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Middle District of PennsylvaniaCivil DivisionDolphus Fudge

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Robert Marsh "see attached"

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No.

4:20-CV-2112
(to be filled in by the Clerk's Office)

FILED
SCRANTON

NOV 12 2020

PER pmo

DEPUTY CLERK

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

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I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Dolphus Otis Fudge		
All other names by which you have been known:			
ID Number	#NJ-9867		
Current Institution	SCI-Benner Township		
Address	301 Institution Drive		
	Bellefonte,	Pa	16823
	City	State	Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	Robert Marsh		
Job or Title (<i>if known</i>)	Superintendent		
Shield Number			
Employer	Pennsylvania Dept. of Corrections		
Address	301 Institution Drive		
	Bellefonte	Pa	16823
	City	State	Zip Code
<input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity			

Defendant No. 2

Name	Dr. Jeffrey Boland		
Job or Title (<i>if known</i>)	Medical Administrator		
Shield Number			
Employer	Contracted by The PA=DOC		
Address	301 Institution Drive		
	Bellefonte	Pa	16823
	City	State	Zip Code
<input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity			

Attachment to page #3 of 11 Defendant's list

Shift Commander 1st Shift

John Doe's working 1st shift on 5/21/2019.

Sergeants and or Lietenant's

John Doe's working 1st shift on 5/21/2019.

Correctional Officers

John Doe's working 1st Shift on Housing Unit GA on 5/21/2019.

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Defendant No. 3

Name Dr. Kevin Coleman
 Job or Title (if known) Prison Doctor
 Shield Number _____
 Employer Contracted by PA-DOC
 Address 301 Institution Drive
Bellefonte Pa 16823
City State Zip Code
☐ Individual capacity ☒ Official capacity

Defendant No. 4

Name CRNP Eyer
 Job or Title (if known) Prison Nurse Practitioner
 Shield Number _____
 Employer Contracted by PA-DOC
 Address 301 Institution Drive
Bellefonte Pa 16823
City State Zip Code
☐ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials? Under the Eighth Amendment you are entitled to medical care for "serious medical needs."

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

Attachment for Page #4 of 11

During the course of the search I was placed in handcuffs and told to stand against the wall outside of my cell. During this time I had started a new medication and wasn't use to the effects of it. I began to feel very dizzy and I fainted and fell to the ground. Because of the restraints and being blacked out I was unable to break my fall. As a result of this fall I broke my Distal Fibula. This incident took place on Housing unit GA Cell 1015.

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- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

The Defendant's named in the above matter acted under "Color of Law" because each and every one of them are either employed by the Pa. Department of Corrections or are contracted by the Pa. Department of Corrections.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

N/A

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.
On 5/21/19 at SCI-Benner Township the Prison was on a lockdown. During the course of the lockdown the prison was searched by prison officials for contraband

"See Attached"

Attachment Question C Page #5 of 11

the injuries to my leg that were sustained during my fall. I received X-Rays to my leg the next day 5/22/19 that indicated that I had a fracture and medical refused to have me treated for 11 days.

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C. What date and approximate time did the events giving rise to your claim(s) occur?

On 5/21/2019 on the 6 a.m. to 2 p.m. shift while the prison was being searched. On 5/22/2019 X-Rays were taken and it was discovered that I had a distal fibula fracture. A posterior short leg splint was applied to my right leg. Tylenol was ordered for pain. On 6/2/2019 or 6/3/2019 approximately 11 days later I was taken to the hospital for surgery where screws and plates were used to repair

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

I was given an increase in my normal medication and as a result while I was handcuffed for a prison search I became extremely dizzy and fell unable to control the fall I broke my leg. The prison's medical team refused to treat me because I wouldn't sign a cash slip as payment for something that is an emergency and by policy they are not allowed to charge for. I never refused treatment. The John Doe Prison guards on the housing unit and staff that were present for the search saw the incident. The John Doe CO's that were involved with my cell search helped me off the ground and sat me on a table till medical arrived.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

On 5/21/2019 I broke my leg (Distal Fibula Fracture). Fractures are suppose to be set within 24 hours of the occurence. I waited 12 days until I was seen by a Orthopedic Doctor at an outside hospital where he did immediate surgery. I was denied access to medical treatment because of my inability to pay. I was in serious pain for 12 days and placed on the top buck to sleep. Medical refused to move me to a lower bunk. On the 12th day the orthopedic doctor preformed surgery on my leg to repair the damage caused.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Nominal damages in excess of \$100,000.00 for violating my constitutional rights.
Compensatory Damages in excess of \$100,000.00 for the physical damages and pain and suffering that was caused by the refusal of treatment and the delay in treatment and surgery as a result.
Punitive Damages in excess of \$100,000.00 for causing me pain and suffering and permenate damage to my leg from the surgery. I have a permanate injury from this incident that causes me pain and suffering.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

I was incarcerated at SCI-Benner Township located at 301 Institution Drive Bellefonte, Pa 16823 at the time and date of this incident.

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

Medical services resulting in Non-Charge.

Medical Services provided to an inmate during a medical emergency.

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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

I filed the grievance in the State Correctional Institution where the event took place. I filed an appeal to the Superintendent and I filed a final appeal to the Secretary's office of Inmate Grievances & Appeals located at Pennsylvania Department of Corrections 1920 Technology Drive Mechanicsburg, Pa 17050.

2. What did you claim in your grievance?

I claimed that my right to medical attention was in fact denied due to deliberate indifference. I was not treated properly for my injury for over 11 days of pain and suffering. This was a medical emergency as classified by the DOC's own policy.

3. What was the result, if any?

All the grievances were upheld and ultimately denied as a result.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. *(Describe all efforts to appeal to the highest level of the grievance process.)*

I appealed all the way to the final appeal which was also denied.

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

N/A

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court (if federal court, name the district; if state court, name the county and State)

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. N/A

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

N/A

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

N/A

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☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition N/a

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

N/A

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IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11-3-20

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Dolphus FudgeNJ-9867301 Institution DriveBellefonte

City

Pa

State

16823

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

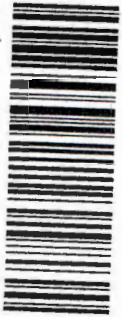
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CORRECTIONS

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Name: Dolphus Fudge
NJ-9867

SCI-Benner Township
301 Institution Drive
Bellefonte, Pa 16823

USPS
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NOV 12 2020

Office of the Clerk
335 N. Washington Street P.O. Box 1149 PER
United States District Court

Middle District of Pennsylvania
U.S. Post Office and Courthouse
Scranton, Pa 18501

DEPUTY CLERK